



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 10/07/2015

C O R A M

WEB COPY

THE HONOURABLE MR. JUSTICE S.VAIDYANATHAN

Writ Petition (MD) No.8512 of 2014

1.V.Meenakshi Sundaram
2.K.Lakshmanan
3.M.A.Saravanan
4.Kasim Mohideen
5.M.Hemalatha

... Petitioners

Vs

1.The Secretary to Government,
Highways Department,
Fort St.George,
Chennai - 600 009.

2.The Chief Engineer,
Highways and Rural Works Department,
Chepauk, Chennai - 600 005

... Respondents

Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order, dated 17.07.2013 in Lr.No.8165/HM2/2012-4, issued by the 1st respondent and quash the same and consequently direct the respondents to regularize the services of the petitioners, who have completed three years of service.

For Petitioners

...

Mr.P.Mahendran

For Respondents

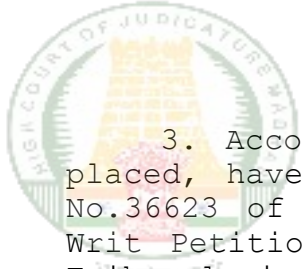
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Mr.R.Anandha Raj, GA.

O R D E R

This Writ Petition has been filed, praying for issuance of a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order, dated 17.07.2013, in Lr.No.8165/HM2/2012-4, issued by the 1st respondent and quash the same and consequently, direct the respondents to regularize the services of the petitioners, who have completed three years of service.

2. The case of the petitioners is that they have been working in the Highways Department ranging from 3 to 5 years. The petitioners 2 and 4 are working from 01.12.1984 and the petitioners 1 and 3 are working from 1.9.1984. The petitioner No.5 is working from 20.09.1995. According to the petitioners, they were appointed by the Assistant Divisional Engineer, Assistant Engineer or Executive Engineer, within the jurisdiction. without reference to employment exchange. Since the petitioners have been working continuously, they are entitled to work continuously with their service being regularized.



3. According to the petitioners, a batch of employees of similarly placed, have approached this Court by filing a Writ Petition in W.P(MD) No.36623 of 2004, seeking for regularization and this Court allowed the Writ Petition on 9.12.2005, relying on the orders of the Administrative Tribunal in O.A.No.1543 of 1993 batch. This Court passed an order directing regularization of services should be completed on or before 30.04.2004. The Government has preferred a Writ Appeal in W.A.(MD)No.1260 of 2008 and a Division Bench confirmed the order of the learned Single Judge, on 11.12.2009. Against which, the Government preferred SLP before the Hon'ble Supreme Court in C.C.No.14093 of 2010 and the same was dismissed on 27.09.2010 and the respondents were given time to comply with the orders of the learned Single Judge on or before 31.03.2011. The order has attained finality and the decision of this Court, dated 9.12.2005, is binding on the respondents.

4. Yet another batch of employees preferred Writ Petitions in W.P(MD) No.14617, 14619 and 14620 of 2012, for a similar relief, which was granted by this Court on 13.06.2012 and against which, Writ Appeals in W.A.(MD) Nos.685 to 687 of 2013, have been preferred and the Division Bench has dismissed the same by confirming the order of the learned single Judge, dated 13.06.2012. Since the petitioners' request for regularization was not considered, this Court, by an order dated 26.04.2012, directed the respondents to consider the request of the petitioners and pass appropriate orders on merits within a period of eight weeks and since the direction of this Court was not complied with, a Contempt Petition in Cont.P.(MD)No.607 of 2013 had been filed and the same was closed on 28.10.2013, based on the representation of the learned Government Advocate that the order of this Court has been complied with. The petitioners submitted that the respondents, by an order dated 17.07.2013, has rejected the request of the petitioners to regularize their services, on the ground that the petitioners have not fulfilled the conditions mentioned in G.O.Ms.No.22, P&AR Department, dated 28.02.2006 and G.O.Ms.No.74 P&AR Department, dated 27.06.2013. The relevant portion of the Government Orders in G.O.Ms.No.22, P&AR Department, dated 28.02.2006 and G.O.Ms.No.74 P&AR Department, dated 27.06.2013, are extracted below:-

" The Government direct that the services of the daily wages employees working in all Government Departments who have rendered 10 years of service as on 01.01.2006 be regularized by appointing them in the time scale of pay of the post in accordance with the service conditions prescribed, for the post concerned subject to their being otherwise qualified for the post.

The services of the full time daily wage employees who have completed 10 years of service after 01.01.2006 shall not be regularized."

5. The petitioners submitted that Government has not complied with the orders of this Court, dated 09.12.2005 and that the respondents have not taken steps to regularize the daily wage employees, who were completed three years of services, but the Government has issued G.O.Ms.No.74 P&AR Department, dated 27.06.2013, that daily wage employees should have been appointed only through Employment Exchange, as per Tamil Nadu Basic Services Rules and that there was no Government Orders prior to 27.06.2013 that the daily wage employees should be appointed only through Employment Exchange. According to the petitioners, any rules that are amended cannot override the final decision of the Court and the Writs or Direction



issued thereon. Further, a policy decision taken by the Government cannot have a force of rule made under Article 309, as held by the Supreme Court in the case of **Ramasamy Vs. Union of India reported in (AIR 1976 SC 2394)**.

6. According to the petitioners, the impugned order, dated 17.07.2013, rejecting the request to regularize the services of daily wage employees, who have completed three years of service, is arbitrary, illegal and against the various decisions of the High Courts and Supreme Court. According to the petitioners, G.O.Ms.No.22, P&AR Department, dated 28.02.2006 and G.O.Ms.No.74 P&AR Department, dated 27.06.2013 are against the decision of the High Courts and Supreme Court and therefore, the intention is only to nonsuit the petitioners from getting the benefit of the orders of this Court. Hence, the action of the respondents is arbitrary and that this Court should grant the relief to the petitioners, who are similarly placed to that of other employees.

7. Per contra, the respondents contended that the petitioners are not fulfilled any of the conditions mentioned in G.O.Ms.No.22, P&AR Department, dated 28.02.2006 and G.O.Ms.No.74 P&AR Department, dated 27.06.2013, which stipulates that employees should have been completed 10 years of service, as on 01.01.2006. The following are the number of days worked by the employees.

S.NO	NAME	PERIOD OF SERVICE		
		FROM	TO	WORKED DAYS
1	2	3	4	5
1	V.Meenaskhi Sundaram	09/1998	12/2004	593
2.	K.Lakshmanan	12/1984	04/2001	3192
3.	M.Saravanan	10/1998	11/2001	457
4.	M.Kaseem Mohideen	12/1984	07/2003	3408
5.	M.Hemalatha	09/1995	03/2000	1143

8. The petitioners were not in continuous service in as much as they had worked only as and when there was any work to be done and was stopped, when necessity ceased. According to the respondents, none of the petitioners were given any particulars as to whether they were recruited through Employment Exchange and as to whether they have appointed in a permanent, sanctioned post within the cadre strength. There are no service particulars furnished by the petitioners and that the petitioners have not been serving in the Highways Department, on the date of Writ Petition or on the earlier Writ Petition in W.P.(MD)No.5952 of 2012 along with others. The petitioners have filed the present Writ Petition, to execute the earlier orders of this Court. As per the policy of the Government, only those full time daily wage employees / NMRs, who were initially appointed on full time basis in consultation with the Employment Exchange, to discharge the functions of the post on the Tamil Nadu Basic Service and who had completed 10 years of service, as on 01.01.2006, shall be regularized against regular vacancies within the sanctioned cadre strength.

9. The Government has categorically stipulated that there cannot be relaxation in respect of educational qualification and the mode of recruitment and that there can be no regularization of full time daily



wage employees, who have completed 10 years of service after 01.01.2006. In this case, the petitioners had not been recruited through Employment Exchange, based on their age and they were not engaged by following the Communal Roster System, as stipulated in G.O.Ms.No.74 P&AR Department, dated 27.06.2013, which is in vogue now and which was passed in supersession of G.O.Ms.No.22, P&AR Department, dated 28.02.2006. It is submitted that the Hon'ble Supreme Court vide order dated 21.02.2014 in Civil Appeal Nos.2726 to 2729 of 2014, rejected the claim of the respondents / employees therein, which is similar to the relief sought for by the petitioners herein claiming that they have been working for the years together and that not regularising their services would tantamount to exploitation.

10. It is the further submission of the respondents that a daily wage employee, if not working against a sanctioned post, cannot be regularized and that parti-time employees are not entitled to seek regularisation, in terms of the decision of the Hon'ble Apex Court in ***State of Karnataka & Others Vs. Umadevi & Others reported in AIR 2006 (13) SCC 448; Union of India & Others Vs. A.S.Pillai & Others reported in 2010 (13) SCC 448 and State of Rajasthan & Others Vs. Daya Lal & Others reported in AIR 2011 SC 1193***. The respondents stated that this Court has directed the respondents to consider the case of the petitioners and the same was considered. Since the petitioners have not fulfilled the conditions laid down in G.O.Ms.No.22, P&AR Department, dated 28.02.2006 and G.O.Ms.No.74 P&AR Department, dated 27.06.2013, the request of the petitioners was not considered.

11. According to the respondents, the petitioners have not challenged the G.O.Ms.No.74 P&AR Department, dated 27.06.2013, and that they cannot make allegation to suit whims and fancies provided G.O.Ms.No.22, P&AR Department, dated 28.02.2006 and G.O.Ms.No.74 P&AR Department, dated 27.06.2013 was in force. The petitioners were daily rated workers and as per the Tamil Nadu Basic Services Rules, are not entitled to for regularisation. The Government Orders mentioned supra are not against the decision of the Court or the Hon'ble Supreme Court and it is only a policy decision, in order to regularize their claims. If the petitioners have fulfilled any of the conditions stipulated in the Government Orders cited supra, certainly, their case would have been considered.

12. I have heard the learned counsel appearing on either side and perused the materials available on record.

13. It is not in dispute that the petitioners have been employed, under the 4th respondent, as NMRs and worked for several years. It is also not in dispute that this Court allowed the Writ Petition in W.P(MD) No.36623 of 2004 on 09.12.2005, granting the relief of regularisation, which was confirmed by the Division Bench of this Court in W.A.(MD)No.1260 of 2008, dated 11.12.2009 and the SLP filed by the Government in C.C.No.14093 of 2010, was dismissed, granting the relief of regularization. It is also an admitted fact that the subsequent Writ Petitions were allowed, granting the relief of regularization, filed by the employees of similarly placed persons like that of petitioners, which were also confirmed by the Division Bench. This Court, by an order, dated 09.12.2005, has granted the relief to the workers, who approached this Court, imposing certain conditions. The petitioners herein did not knock



the doors of this Court. In the meantime, the G.O.Ms.No.22, P&AR Department, dated 28.02.2006, was issued imposing certain conditions for regularization of service of the employees. Subsequently also, the Division Bench has passed the order with regard to the employees, who were joined the services subsequent to the petitioners. Since there was no Government Orders, when the first order, dated 09.12.2005 was passed, following the orders of Tamil Nadu Administrative Tribunal, this Court has granted the relief, which has been confirmed by the Division Bench and also the Supreme Court dismissed the SLP filed by the Department. In the order produced by the petitioners, with regard to the subsequent batch of cases, there is no reference to G.O.Ms.No.22, P&AR Department, dated 28.02.2006, that means, G.O.Ms.No.22 was given a go-by by the respondents and hence, the employees had the relief of regularization.

14. In this case, the respondents have categorically taken a plea that in terms of G.O.Ms.No.22, P&AR Department, dated 28.02.2006 and G.O.Ms.No.74 P&AR Department, dated 27.06.2013, the employees are not entitled to the relief. Admittedly, in this case, G.O.Ms.No.74 P&AR Department, dated 27.06.2013, is not applicable to the facts of this case, as the employees have approached this Court with, before the said Government Order was in force. However, the conditions laid down in the G.O.Ms.No.22, P&AR Department, dated 28.02.2006, was not fulfilled by the petitioners. Strictly speaking, in terms of G.O.Ms.No.22, P&AR Department, dated 28.02.2006, the petitioners are not entitled to the relief sought for, as the subsequent Division Bench in W.A.(MD)Nos.685 to 687 of 2013, has passed an order without reference to G.O.Ms.No.22, P&AR Department, dated 28.02.2006, and admittedly, as seen from the order, the G.O.Ms.No.22, P&AR Department, dated 28.02.2006, was not brought to the attention of the Division Bench. If the G.O.Ms.No.22, P&AR Department, dated 28.02.2006 was brought to the attention of the learned Single Judge and the Division Bench, certainly, the Court would have taken a different view, as the original order i.e., W.P.No.36623 of 2004, dated 09.12.2005, was passed prior to introduction of G.O.Ms.No.22, P&AR Department, dated 28.02.2006, with effect from 1.1.2006. There should not be any back door entry, as held by the Hon'ble Supreme Court. The Hon'ble Supreme Court has also held that the similarly placed employees shall not be deprived of the benefits. Taking note of the two views of the Hon'ble Apex Court and on equity and that as admitted by the respondents that persons, who have joined subsequent to the petitioners have been regularized pursuant to the orders of the Writ Appeal Nos.685 to 687 of 2013, dated 25.03.2013, and taking note of the Articles 14, 16 and 21 of Constitution of India, I direct the respondents to regularise the services of the petitioners from the date of the petitioners approached this Court in the earlier Writ Petitions and effect monetary benefits with effect from 1.6.2015.

15. The petitioners have filed affidavits stating that they are giving up the back wages.

16. In view of the above, the petitioners are not entitled to back wages and that the period of service during which they were actually working, which are mentioned in the counter and the said period alone shall be taken into account for the purpose of pensionary benefits and that period or any other period will not be taken into account for



gratuity and other benefits. The respondents shall give effect to the order, within a period of two months from the date of receipt of a copy of this order.

17. The Writ Petition is allowed to the extent mentioned supra. No costs.

Sd/-
Assistant Registrar

/True Copy/

Sub Assistant Registrar

To

1.The Secretary to Government,
Highways Department,
Fort St.George,
Chennai - 600 009.

2.The Chief Engineer,
Highways and Rural Works Department,
Chepauk, Chennai - 600 005

TS/ 10.07.2015/6P - 3C

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